

AMENDED IN ASSEMBLY APRIL 22, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 349

Introduced by Assembly Member Gatto

February 13, 2013

An act to add Section 45118 to the Education Code, relating to school administration.

LEGISLATIVE COUNSEL'S DIGEST

AB 349, as amended, Gatto. Classified employees: misconduct ~~against~~ *involving* a child: reports.

Existing law authorizes the governing board of a school district to lay off and reemploy classified employees in accordance with specified procedures. Existing law requires classified employees subject to a layoff, to be effective at the end of the school year, to be given written notice on or before April 29 informing them of the layoff and of any displacement and reemployment rights.

This bill would require the superintendent of the employing school district or a charter school administrator to report a change in employment status to the State Department of Education when a classified employee is dismissed, is suspended, resigns, retires, or is otherwise terminated by a decision not to employ or reemploy, as a result of allegations of misconduct ~~against~~ *involving* a child, as defined. The bill would require the report to the department to contain all known information about each alleged act of misconduct, *as specified*, and would require the department to maintain the report *by county and by the employee's name in a searchable format. The bill would require*

the department to establish due process procedures for purposes of removing a classified employee's name from the reports, as provided, and procedures for determining whether a decision to dismiss, suspend, or not to employ or reemploy a classified employee, or when an employee resigns or retires, as a result of an allegation of misconduct involving a child or while an allegation of misconduct involving a child is pending are proven unfounded or substantiated, as the bill would define those terms. By imposing a new duty on a school district or charter school, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. It is the intent of the Legislature that the State*
2 *Department of Education and the Commission on Teacher*
3 *Credentialing enter into an interagency agreement for a minimum*
4 *of three years, in order for the commission to provide assistance*
5 *to the department in administering Section 45118 of the Education*
6 *Code.*

7 ~~SECTION 1.~~

8 SEC. 2. Section 45118 is added to the Education Code, to read:
9 45118. (a) (1) When a classified employee is dismissed,
10 resigns, is suspended, retires, or is otherwise terminated by a
11 decision not to employ or reemploy, as a result of an allegation of
12 misconduct—~~against~~ involving a child or while an allegation of
13 misconduct—~~against~~ involving a child is pending, the superintendent
14 of the employing school district or a charter school administrator
15 shall report the change in employment status to the department no
16 later than 30 days after the employment action.

17 (2) “Otherwise terminated by a decision not to employ or
18 reemploy” as used in paragraph (1) shall not include or be

1 *interpreted to include a change of status that is solely for a layoff*
2 *as described in Section 45308.*

3 (b) For ~~the~~ purposes of this section, “allegation of
4 misconduct ~~against involving a child~~” means ~~an offense specified~~
5 *misconduct that involves any of the acts described in Sections*
6 *11165.2 to 11165.6, inclusive, of the Penal Code, a sex offense as*
7 *specified in Sections Code and Section 44010, and that involves*
8 *aiding or abetting the unlawful sale to, use by, or exchange to*
9 *minors of a controlled substance listed in Schedule I, II, or III as*
10 *included in Sections 11054, 11055, and 11056 of the Health and*
11 *Safety Code.*

12 (c) For purposes of this section, the term “school district”
13 includes a county office of education.

14 (d) The report shall contain all known information about each
15 ~~alleged act of misconduct.~~ *misconduct and shall include all of the*
16 *following:*

- 17 (1) *The name of the classified employee.*
- 18 (2) *The current address of the classified employee.*
- 19 (3) *The name of the reporting school district or charter school.*
- 20 (4) *The name of the last school of employment.*
- 21 (5) *An explanation of the allegation of misconduct or pending*
22 *allegation of misconduct.*

23 (6) *Current contact information for all persons who may have*
24 *information relating to allegation of misconduct.*

25 (7) *Any and all documentation related to the case.*

26 (e) The report shall be made to the department regardless of any
27 proposed or actual agreement, settlement, or stipulation not to
28 make such a report. The report shall also be made if allegations of
29 misconduct ~~against involving a child~~ served on the employee are
30 withdrawn in consideration of the employee’s resignation,
31 retirement, or other failure to contest the truth of the allegations.
32 The department shall maintain these reports by county and by
33 ~~school district or charter school.~~ *the employee’s name, in a*
34 *searchable format. This information shall not be made available*
35 *to the general public.*

36 (f) The superintendent of an employing school district or a
37 charter school administrator shall, in writing, inform a classified
38 employee of the content of this section if that employee is
39 dismissed, resigns, is suspended, retires, or is otherwise terminated
40 by a decision not to employ or reemploy, as a result of an allegation

1 of misconduct ~~against~~ involving a child or while an allegation of
2 misconduct ~~against~~ involving a child is pending.

3 (g) *The department shall establish due process procedures with*
4 *the purpose of removing a classified employee's name from the*
5 *reports maintained pursuant to subdivision (e). These procedures*
6 *shall include, but not be limited to, a timeframe for how long a*
7 *classified employee's name shall be included in the reports*
8 *maintained pursuant to subdivision (e).*

9 (h) (1) *The department shall establish procedures to determine*
10 *whether a decision to dismiss, suspend, or not to employ or*
11 *reemploy a classified employee, or when an employee resigns or*
12 *retires, as a result of an allegation of misconduct involving a child*
13 *or while an allegation of misconduct involving a child is pending*
14 *are proven unfounded or substantiated. If the department*
15 *determines the allegation of misconduct involving a child are*
16 *proved unfounded, the classified employee's name shall not be*
17 *included in reports established pursuant to this section.*

18 (A) *For purposes of this section "unfounded" means a report*
19 *that is determined by the department to be false, to involve an*
20 *accidental injury, or to not constitute misconduct involving a child*
21 *as defined in subdivision (b).*

22 (B) *For purposes of this section "substantiated" means a report*
23 *determined by the department to constitute misconduct involving*
24 *a child, based upon evidence that makes it more likely than not*
25 *that misconduct, as described in subdivision (b), occurred.*

26 (2) *If a school district or charter school initiates an investigation*
27 *against a classified employee for allegations involving a child as*
28 *defined in this section, the school district or charter school shall*
29 *provide the department with all relevant information pertinent to*
30 *this investigation.*

31 ~~SEC. 2.~~

32 SEC. 3. If the Commission on State Mandates determines that
33 this act contains costs mandated by the state, reimbursement to
34 local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.

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